

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

In re Mortgage Foreclosure Cases

Misc. No. 11-mc-88-M-LDA

ORDER

A number of cases filed in the above-captioned matter have been involuntarily dismissed in recent months for non-payment of Use & Occupancy fees or non-payment of court retainer fees. Those dismissals followed Orders to Comply issued by the Special Master, a Recommendation of Dismissal, an opportunity to Show Cause, and, ultimately, the approval of the Recommendation of Dismissal by the District Court.

In some cases, plaintiffs have re-filed new but identical or virtually identical complaints naming identical or virtually identical defendants. In these situations, and with respect to similar re-filings in the future, the Special Master has assessed as due and owing *in the re-filed (new) case* all unpaid Use & Occupancy fees as well as all unpaid court retainer fees carried over from the original case. In addition, if there is a gap between the dismissal of the original case and the filing of the new case, the Special Master has assessed as due and owing Use & Occupancy fees that would have been due during that gap had the original case not been dismissed. Thus, the obligation of payment of Use & Occupancy fees continues unbroken from the first billing through the current period.

The Use & Occupancy fee is a condition both of the stay against foreclosure proceedings and presence on the Special Master docket; the retainer fees support the administration of the case on that

docket. The Use & Occupancy fees are held in escrow against the eventual possibility that, by agreement or otherwise, all or some portion of them will be disbursed to defendants. To permit plaintiffs to escape these fees by letting them mount up unpaid, suffering dismissal, and then leaving them behind through the simple construct of a re-filing would be unfair and inequitable. Indeed, such a path would prove economically beneficially whenever the filing fee is less than the accumulated total of Use & Occupancy and court retainer fees.

For that reason, payment of past due Use & Occupancy fees and court retainer fees is a condition of pursuing a re-filed case on the Special Master docket, as well as payment of any fees that would have been due during any gap between dismissal and re-filing. Plaintiffs have sixty (60) days from the date of re-filing to pay all arrearages, and must remain current with monthly billings on the re-filed case.

/s/ Merrill W. Sherman
Merrill W. Sherman
Rhode Island Special Master

2/7/2012
Date

MWS/bh